Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
1998 Biennial Regulatory Review	)	
Petition for Section 11 Biennial Review	)	
filed by SBC Communications, Inc.,	)	CC Docket No. 98-177
Southwestern Bell Telephone Company,	)	
Pacific Bell, and Nevada Bell	)	

REPLY COMMENTS OF LOGIX COMMUNICATIONS CORPORATION

Logix Communications Corporation ("Logix"), respectfully submits the following reply comments in the above-captioned proceeding.[1] Logix filed initial comments on January 11, 1999.[2]

The basis for the sweeping deregulatory relief sought by SBC and incumbent local exchange carriers ("LECs") LECs in this proceeding is their view that substantial competition exists in the local service market eliminating, or substantially reducing, the need for regulatory oversight of incumbent LECs by the Commission. In its initial comments, Logix pointed out that SBC in its petition initiating this proceeding provided insufficient evidence of local service

---

1 *1998 Biennial Regulatory Review -- Petition for Section 11 Biennial Review,* Notice of Proposed Rulemaking, CC Docket No. 98-177, FCC 98-238, released November 24, 1998 ("*NPRM*").

2 Comments of Logix Communications Corporation, CC Docket No. 98-177, filed January 11, 1999.

competition to warrant this relief.[3] For example, other than general allegations that special access, direct trunked transport, operator services, directory services, and interexchange services are competitive, SBC in its initial petition did not provide any factual or substantive information that would support its request for sweeping tariffing and price deregulation. While it referenced a study that it commissioned in 1996-1997, it did not submit this study with its petition.[4] Logix also pointed out that incumbent LECs continue to possess the overwhelming share of the local service market.[5]

Initial comments do not provide any further basis for granting the requested relief. Incumbent LECs, in very brief comments, provide only generalized, unsupported allegations that local service markets are sufficiently competitive to warrant the substantial deregulation they seek. Thus, the comments of incumbent LECs supporting detariffing of these services do not submit any factual showing of the type that could provide a rational basis for the Commission to justify the major deregulatory steps that they seek. Instead, like SBC's initial petition, they merely offer unsupported allegations that the market for these services is sufficiently competitive to warrant price deregulation,[6] and/or refer to issues pending in other proceedings.[7] Accordingly, Logix submits that there is insufficient basis to grant the broad pricing and other deregulation that incumbent LECs are asking for.

---

[3] Logix Comments at 1.

[4] SBC Petition at 22, n. 37.

[5] Logix Comments at 1.

[6] See, e.g., Bell Atlantic Comments at 5; BellSouth Comments at 2.

[7] Ameritech Comments at 4.

Logix strongly reiterates that it would be premature to grant any of the requested relief concerning tariffing or other regulatory areas given that incumbent LECs continue to possess 97% of the local service market.[8] Logix submits that it would not be appropriate to grant the sweeping deregulatory relief sought by incumbent LECs in this proceeding until they have demonstrated by some objective standard that they have opened their markets to competition, such as by compliance with Section 271, and that there is additionally a far greater development of competition in the local service market than is present today.

Logix is very concerned about whether the Commission is considering issues concerning forbearance from tariffing and pricing regulation for high capacity services in an orderly way.[9] Logix urges the Commission to establish a process for consideration of these issues that does not entail numerous, repetitive filings which can be burdensome to some interested parties. In order to minimize the need for repetitive filings, Logix hereby attaches its comments filed recently in response to the separate SBC petition for forbearance from regulation of high capacity services in fourteen markets in its service area.[10] Those comments show that SBC, even where it attempts to provide some factual basis for its claim of competition in local service markets, has failed to justify the requested relief.

---

[8] *Local Competition*, Industry Analysis Division, December 1998, at 5.

[9] *See* Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington, DC; Vermont; and Virginia, CC Docket No. 99-24, filed January 20, 1999; *Public Notice*, Petition of SBC Communications, Inc. for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Fourteen Metropolitan Service Areas, CC Docket No. 98-227 (December 8, 1998).

[10] Comments of Logix Communications Corporation, CC Docket No. 98-227, filed January 21, 1999.

For these reasons, Logix urges the Commission to deny incumbent LEC's requests for the regulatory relief sought in this proceeding.

Respectfully submitted,

Patrick J. Donovan
Pamela S. Arluk.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500

Dated: January 26, 1999

Counsel for Logix Communications Corporation

CERTIFICATE OF SERVICE

I, Candise M. Pharr, hereby certify that on this 26th day of January 1999, copies of the foregoing Reply Comments of Logix Communications Corporation were delivered by hand and first class mail to the following:

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
12th Street Lobby - TW-A325
Washington, D.C. 20554

Judy Boley
Federal Communications Commission
1919 M Street, N.W. - Room 234
Washington, D.C. 20554

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036

Timothy Fain
OMB Desk Officer
725 17th Street, N.W.
10236 NEOB
Washington, D.C. 20503

Diskette Only To:

Anthony Dale
Legal Branch Accounting Safeguards Division
Federal Communications Commission
2000 L Street, N.W. - Suite 201 - Room 200D
Washington, D.C. 20554

By First Class Mail To:

Stephen L. Earnest
M. Robert Sutherland
BellSouth Corporation
1155 Peachtree Street, N.E. - Suite 1700
Atlanta, Georgia 30306-3610

Robert J. Aamoth
Todd D. Daubert
Kelley Drye & Warren LLP
1200 19th Street, N.W. - Suite 500
Washington, D.C. 20036

Joseph DiBella
Edward Shakin
1320 North Court House Road - Eighth Floor
Arlington, Virginia 22201

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
United States Telephone Association
1401 H Street, N.W. - Suite 600
Washington, D.C. 20005

Lawrence Fenster
Senior Economist
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W. - Suite 701
Washington, D.C. 20006

Barry Pineles
Regulatory Counsel
GST Telecom Inc.
4001 Main Street
Vancouver, Washington 98663

Randolph J. May
Sutherland, Asbill & Brennan LLP
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404

Mark C. Rosenblum
J. Manning Lee
AT&T Corp.
295 North Maple Avenue - Room 3245H1
Basking Ridge, New Jersey 07920

Candise M Pharr

Candise M. Pharr

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition of the SBC Companies for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Specified MSAs	)) CC Dkt 98-227))

COMMENTS OF LOGIX COMMUNICATIONS CORPORATION

Logix Communications Corporation ("Logix") respectfully submits the following comments in response to above-captioned petition filed by the SBC Companies requesting forbearance from regulation as dominant carriers in their provision of high capacity transport services in 14 Metropolitan Statistical Areas ("MSAs") in their service areas.[1]

Logix is an integrated communications provider of local, long distance, wireless, and Internet access services.

I. THE SBC REQUEST SHOULD NOT BE CONSIDERED SEPARATELY FROM PRICING FLEXIBILITY ISSUES

Logix is concerned about the number of procedural vehicles pursuant to which SBC is asking the Commission to consider deregulation of its provision of high capacity services.

1 *Public Notice*, Petition of SBC Communications, Inc. for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Fourteen Metropolitan Service Areas, CC Docket No. 98-227 (December 8, 1998).

Apparently, SBC believes that asking for this relief often makes it more likely that it will be granted. Thus, in addition to the instant petition, SBC has asked for forbearance from regulation of high capacity services in its separate biennial review petition[2] and in comments concerning pricing flexibility in the Commission's ongoing *Access Reform Proceeding*.[3] Other carriers have also filed similar petitions.[4] Logix urges the Commission to undertake efforts to establish a more orderly way for it to consider this matter rather than obtaining repeated comments on the same issues. Smaller carriers do not always have the time or resources to participate in the multiple filings necessary to effectively participate in this process. Moreover, Logix believes that multiple, repeated filings strain the resources of the Commission and makes reasoned decision making more difficult.

Accordingly, Logix urges the Commission to issue a summary denial of the SBC petition on the grounds indicated in these comments and determine that the appropriate proceeding for examining deregulation of incumbent LEC provision of high capacity services is the ongoing *Access Reform Proceeding* in which the Commission is directly examining these issues. There, the Commission is seeking to establish an adequate record to permit

---

[2] *See 1998 Biennial Regulatory Review -- Petition for Section 11 Biennial Review,* Notice of Proposed Rulemaking, CC Docket No. 98-177, FCC 98-238, released November 24, 1998.

[3] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket Nos. 96-262, 94-1, 91-213, 96-263, 11 FCC Rcd 21354 (1996) ("*Access Charge Reform NPRM*").

[4] *See e.g.*, recent petitions of US West and Bell Atlantic.

consideration of pricing flexibility policies for incumbent LECs. In this connection, SBC's contention that the record in that proceeding is stale is simply incorrect since the Commission has recently solicited comments to update the record.[5] The *Access Reform Proceeding*, rather than SBC's request for peremptory relief by means of the instant petition, is the appropriate vehicle for considering the myriad subsidiary issues relating to pricing flexibility such as gradations of competition and regulatory relief, and compliance with the marketing opening provisions of the 1996 Act.

II. SBC HAS NOT SHOWN THAT IT LACKS MARKET POWER FOR HIGH CAPACITY SERVICES IN THE 14 MSAs IN QUESTION

A. Market Share

At the heart of SBCs request that it should be deregulated in its provision of high capacity services in the 14 MSAs in question is its contention that its market share of high capacity services in those markets has declined significantly. Its entire showing in support of this claim is a study by a consulting firm, Quality Strategies, that purports to show SBC's market share of high capacity services in each of these cities, in some cases showing an SBC share of only 49%.

Logix submits that SBC's showing does not provide sufficiently probative information concerning market share to warrant any conclusions about SBC's market share in any of these 14 MSAs. The Quality Strategies study defines the high capacity market as the "universe of DS-1

---

[5] *Commission Asks Parties to Update and Refresh Record For Access Charge Reform and Seeks Comment on Proposals For Access Charge Reform Pricing Flexibility*, Public Notice, FCC 98-256, released October 5, 1998.

and above circuits used either for end user customer's traffic (Provider) or for carrier transport (Transport)."[6] This basis for identifying market share is deficient in several respects. First, the Quality Strategies study fails to adequately explain its basis for measuring the high capacity market. Other than this somewhat cryptic statement, the Quality Strategies study completely fails to explain how it estimated high capacity services market share. Essentially, the Quality Strategies study provides only this statement and then reports the market share results in a completely conclusory fashion. Logix submits that a more reasoned explanation of the methodology of the study, not to mention the underlying facts relied on in the study and how they were obtained, must be presented before the Commission can make any well-founded market share findings on the basis of it.

Further, to the extent parties to this proceeding can guess as to the basis for the market share estimates, it appears that they were made on the basis of DS-1 equivalents. This is a grossly inadequate basis for estimating market share. In some cases, competitive local exchange carriers ("LECs") are providing to customers primarily DS-3 services and higher, rather than, or in addition to, DS-1 services. A DS-3 service is equivalent to 28 DS-1s. Thus, a 50% market share could be achieved on the basis of DS-1 equivalents when a competitive LEC is providing one DS-3 circuit to one customer in one building in the MSA and SBC is providing 28 DS-1s to 28 separate customers throughout the MSA. While the actual provisioning of service may not be this starkly contrasting between incumbent and competitive LECs, using DS-1 equivalents

---

6 "End users utilize high capacity circuits to connect two business locations in the same LATA (point-to-point) or to connect to a carrier's point-of-presence (POP)(special access). Carriers utilize high capacity transport circuits to provide links between POPs, central offices and tandems." Quality Strategies, SBC High Capacity Market Study, 1998, at 2.

glosses over the genuine pattern of competition for high capacity services in any market. In fact, it is most likely to be the case in most markets that competitive LECs have a far smaller facilities-based presence in these markets and serve far few customers than incumbent LECs. Logix submits that any estimate of market share of competitive LECs must be based on a more complete picture of market presence than the self-serving and gross measure of DS-1 equivalents. Conveniently omitted from the Quality Studies study is any estimate of customers served, share of revenues, or any market share breakdown of share of various high speed services that may have been considered as part of the "total universe" of DS-1 equivalent circuits.

The Quality Strategies study is also deficient in that it fails to justify why it has included a single market share estimate encompassing both end user and carrier customers of high capacity services. Logix is concerned that this approach is also self-serving and glosses over potentially meaningful distinctions in incumbent LEC market power in services provided to end users and carriers.

B. Other Indicia of Market Power

In assessing market power, the Commission has also assessed supply and demand elasticities concerning provision of the service in question. For the most part, SBC has provided no more than generalized allegations of demand and supply elasticities. Logix submits that the fact that customers of high capacity services are frequently large customers does not show that such customers have significant alternatives for service so that demand for SBC services will be very sensitive to price increases. Similarly, SBC's unsupported allegations do not show that competitive LECs have facilities in place such that they can quickly serve customers that might seek to leave SBC for a competitive carrier. SBCs' broad and conclusory allegations of competition do not show that facilities of competitors are sufficiently extensive or so located in these 14 MSAs that competitors could quickly supply service to customers seeking to switch from SBC.

The Commission has also examined the size and resources of a carrier in assessing market power. SBC dwarfs the resources of competitors such as Logix. While large companies are additionally seeking to enter the local service market for high speed services, or may have already entered, they cannot bring to bear in any single market resources comparable to SBC because they must disperse resources among the various local markets they are seeking to enter or in which they are providing service. In any market within its service territory, SBC's size and resources will dwarf those that large companies can bring to bear in it. Moreover, should it be approved, SBC's request to merge with Ameritech must be considered in assessing size and resources. Accordingly, Logix submits that based on size and resources SBC must be considered to possess market power in provision of high speed services.

III. DEREGULATION SHOULD NOT BE GRANTED ABSENT COMPLIANCE WITH THE MARKET OPENING PROVISIONS OF THE ACT

In the *Access Reform Proceeding*, the Commission envisioned a phased approach to pricing flexibility in which some pricing flexibility could be granted as soon as incumbent LECs have demonstrated that they have opened their markets to competition measured by reference to some appropriate test.[7] Later, when actual, substantial competition had developed greater pricing

[7] *Access Reform NPRM*, para. 163.

flexibility could be granted up to and including forbearance of the type envisioned by SBC for high capacity services in this proceeding.

SBC's request for forbearance conveniently ignores the Commission's phased conception of the basis for establishing pricing flexibility and any obligation on its part to comply with the key interconnection, unbundling, resale and other obligations of the 1996 Act designed to achieve local service competition. It is no accident that SBC has ignored this point since it is a long way from complying with an objective measure of opening its markets to competition such as Section 271 of the Act. Logix submits that the Commission could not be assured that price deregulation would not enable incumbent LECs to engage in anti-competitive pricing strategies absent both compliance with the Act and the presence of substantial, actual competition. SBC's petition represents little more than another effort to obtain price deregulation far in advance of the time when it would be appropriate to be granted.

IV. THE REQUESTED RELIEF IS TOO BROAD

Logix believes that SBC's request -- essentially complete deregulation of high capacity services in its specified 14 MSAs -- is far too broad both in terms of geographic scope and relief requested. MSAs can encompass very broad geographic areas. Yet it is entirely possible that competitors may be present in only a small portion of an MSA. Logix submits that a more refined identification of the appropriate geographic scope of pricing flexibility is both feasible and more likely to minimize any prospects of incumbent LECs implementing anti-competitive pricing strategies. For example, the Commission should consider the possibility of implementing pricing flexibility on a central office basis where competitors are actually serving a significant percentage of the market to which the central office could provide service. This approach is feasible and would avoid the risk that incumbent LECs could make up price reductions in competitive areas of the MSA by rate increases in other areas of the MSA, which would be possible under SBC's approach.

In addition, the requested relief is too broad in that it does not tailor regulatory relief to the degree of competition present. The Commission is less likely to grant too much pricing flexibility too soon that could threaten competition if it establishes a phased approach to pricing flexibility as envisioned in the *Access Reform Proceeding* in which various degrees of pricing freedom could be granted in response to greater degrees of actual competition. The Commission should reject SBC's proposal because it would leap to the end-game of pricing flexibility and prejudge a determination as to the appropriate preconditions for granting pricing flexibility.

V. THE SBC PETITION FAILS TO MEET THE STATUTORY STANDARD FOR FORBEARANCE

Under Section 10(a) of the Communications Act, the Commission must forbear from enforcing a regulatory requirement if (1) enforcement of such regulation is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable; (2) enforcement of such regulation is not necessary for the protection of consumers; and (3) forbearance from applying such regulation is consistent with the public interest.[8]

---

[8] 47 U.S.C. Sec. 160(a).

Logix submits that the Commission could not make these findings in this case. First, for the reasons discussed, SBC has not shown that it lacks market power in provision of high capacity services that would enable the Commission to rely on market forces, rather than regulation, to assure that prices for high capacity services are reasonable. Thus, as discussed, the Quality Strategies study does not present probative evidence of competition in provision of high capacity services and should be disregarded. In addition, the Commission could not conclude that forbearance would be consistent with the public interest. Absent compliance with the market opening provisions of the Act, it would not be in the public interest to substantially deregulate incumbent LECs because there would be no assurance that they could not engage in conduct that would thwart competition. Accordingly, the Commission must deny SBC's request for forbearance.

VI. CONCLUSION

For these reasons, Logix urges the Commission to deny SBC's request for forbearance from dominant carrier regulation for provision of high capacity services.

Respectfully submitted,

Patrick J. Donovan
Pamela S. Arluk
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500

Counsel for Logix Communications Corporation

Dated: January 21, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January 1999, copies of the foregoing Comments of Logix Communications Corporation were served by hand delivery on the parties on the attached service list:

Candise M. Pharr

Candise M. Pharr

VIA HAND DELIVERY

Magalie Roman Salas, Esq. (original +10 copies)
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
TW-A325
Washington, DC

VIA HAND DELIVERY

Jane Jackson
Chief, Competitive Pricing Division
Federal Communications Commission
The Portals
445 12th Street, SW
TW-A325
Washington, DC

VIA HAND DELIVERY

Richard Lerner
Deputy Chief, Competitive Pricing Division
Federal Communications Commission
The Portals
445 12th Street, SW
TW-A325
Washington, DC

VIA HAND DELIVERY

International Transcription Service
1231 20th Street, N.W.
Washington, DC 20554